

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2445 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NENSI NARANDAS POPAT

Versus

COMPETENT AUTHORITY, SAFEMA

Appearance:

MR RS SANJANWALA for Petitioners
MR JAYANT PATEL for Respondent No. 1
NOTICE SERVED for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 02/12/2000

ORAL JUDGEMENT

Rule. Learned Advocate Mr. Jayant Patel waives
service of rule on behalf of the respondent no.1- the

Competent Authority SAFEMA, Ahmedabad. The respondent no.2, 2/1 to 2/5 and 3 who are duly served with notice issued vide earlier order dated 7-4-1999 have remained absent.

1. The petitioners have challenged the order dated 28-1-1999 passed by the respondent no.3- the Appellate Tribunal for Forfeited Property, New Delhi in the proceedings of MP no.112/AHD/96(COD) whereby the respondent no.3 has rejected the appeal and the application to condone the delay in presenting the appeal to challenge the order of the respondent no.1 dated 29-6-1981 forfeiting the property bearing Survey no.33 admeasuring 5 acres and 35 gunthas land of village Nirana Taluka Khambolia, District Jamnagar, State of Gujarat(hereinafter referred to as the subject property.)

2. The present petitioners are the heirs and legal representatives of deceased Nensi Narandas Popat who purchased the piece of land admeasuring 5 acres and 35 gunthas of Survey no.33 of village Nirana, Taluka Khambolia, District Jamnagar from the respondent no.2-Vadha Hasam Hussain vide sale deed dated 29-6-1975, copy of which is annexed at Annexure "A". That the mutation entry of the said sale transaction was made in village form no.VI maintained under the provisions of Bombay Land Revenue Code and the copy of the said village form no.VI is produced on record at Annexure "K". It would be pertinent to note that the said transaction of purchasing the subject property by deceased Nensi Narandas Popat was effected prior to coming into force of the Smugglers and Foreign Exchange Manipulation(Forfeiting of Property) Act, 1976 (hereinafter referred to as " the Act"). That the respondent no.1-Authority appointed under the Act initiated the proceedings under Section 7 of the Act against the respondent no.2 in respect to land bearing Survey no.33 of village Nirana, Taluka Khambolia, District Jamnagar, including the subject property and vide order dated 29-6-1981 the entire piece of land of Survey no.33 alongwith land of Survey nos.34 and 69 were forfeited to the Central Government under the provisions of the Act.

The petitioner has contended that though the petitioner was the owner of the subject property which was a part and parcel of the land against which the respondent no.1 has initiated proceedings under Section 7 of the Act, no notice as contemplated under Sec.6 of the Act was served to the deceased Nensi Narandas Popat. That having found the entry regarding forfeiture of the land in revenue record, deceased Nensi Narandas Popat

initiated proceedings under the Bombay Land Revenue Code and during the said proceedings when affidavit was filed on behalf of the present respondent no.1 dated 17-1-1996, the petitioners came to know regarding forfeiture of the said property under Section 7 of the Act, and thereby, preferred an appeal before the respondent no.3 alongwith an application to condone the delay, if any, in filing the appeal as per the copies produced vide Annexures "F" and "G". It appears from the record that the respondent no.3 refused to register the appeal of the petitioner on the ground that the same is filed beyond the prescribed period of limitation of sixty days.

3. That being aggrieved and dissatisfied by the said order, the petitioners filed Special Civil Application no.5122/96 in this Court and vide order dated 16-2-1998, this Court remanded the matter back to the respondent no.3 with a direction to comply with the necessary formality as per Rules (7) and (8) and then pass appropriate orders. It was further directed that till the said orders could be passed the impugned order of forfeiture against the subject property passed under the Act shall not be executed or implemented and if the petitioner is in possession, the same shall not be disturbed.

That thereafter, the respondent no.3 heard the application to condone the delay and the appeal of the petitioner as directed by this Court under the above stated order but vide order dated 28-1-1999 refused to condone the delay in presentation of the appeal and rejected the appeal also. The said orders of refusal to condone the delay and rejection of appeal is under challenge in the present petition.

4. That the perusal of the impugned order suggests that in paragraph 4, the Tribunal has made following observations:

"4. The order against which this appeal is filed was passed by the Competent Authority on 29-6-1981, directing the forfeiture to an extent of 32 acres of land belonging to the second respondent, holding that the said properties are illegally acquired properties. The appellant claims to have purchased to an extent of 5 acres and 35 Gunthas out of said land which is forfeited. The appellant was not a party to the proceedings before the Competent Authority, as the revenue records did not show his name as the owner of the property as said to have been purchased by him. There was, therefore, no question of the order of the Competent Authority being

served on the appellant under Sec.22 of the Act. The appellant did not take any steps to have the name mutated in the revenue records. He became aware of the forfeiture order when he was served with the affidavit of the Competent Authority on 17-1-1996. He filed the appeal only on 11-6-1996 nearly five months after he had knowledge of the forfeiture order."

5. The Tribunal further observed in the order that the petitioner had prayed to condone the delay on the ground that the petitioners came to know about the order of forfeiture only on 17-1-1996 when affidavit filed by the Competent Authority was served. However, non service of the order of forfeiture on the appellant did not matter under those circumstances and it was imperative on the part of the appellant to have filed the appeal within a reasonable time, if he had knowledge of the passing of the forfeiture order. It is further observed that the petitioners have claimed to be illiterate and ignorant of law which prevented them from filing the appeal till 11-6-1996. That ignorance of law is no excuse being a well known principle, the appellant ought to have filed the appeal within a reasonable time from the date of knowledge of the order. That the application to condone the delay filed by the appellant is totally silent with regard to reasons for the delay in presenting the appeal, and as such, there is no sufficient cause for not filing the appeal within a reasonable time. That though Section 12(4) of SAFEMA is very stringent with regard to the time within which an appeal has to be filed only by the person served with the forfeiture order, the principle is applicable even while construing as to what is the "reasonable time" within which an appeal should be filed by a person who is not a party to the proceedings but who became aware of the proceedings. That Section 12(4) of the Act provides that appeal against the order of forfeiture has to be preferred within 45 days from the date of service of the order and the proviso empowers the Tribunal to entertain the appeal after the period of 45 days but not after 60 days from the date of the said order, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

On the above stated observation, the respondent no.3 held that having come to know about the forfeiture order on 17-1-1996 the presentation of subject appeal to challenge the said order on 11-6-1996 i.e. after four months and twenty five days cannot be said to be within reasonable period without any explanation, and as such, the Tribunal has rejected the application and appeal.

6. The observation made by the Tribunal to reject the appeal and, more particularly, the application to condone the delay cannot be said to be just, proper or reasonable for more than one reasons.

7. In a series of decisions, the Apex Court has held that when substantial justice is pitted against the procedural technicalities, the Court would lean towards substantial justice and would protect the right of the individual against the oppressing action of the authority. Furthermore, in the matters of condoning delay, time and again, the Apex Court has held that liberal view should be taken to condone the delay unless it is found that delay is deliberate or inexcusable or on account of indifferent conduct of the party. That when no period of limitation is fixed and appeal has to be filed within a reasonable period, the duration of reasonable period would depend on the facts and circumstances of each case and Court has to consider the same in the context of facts involved in each case.

8. That, in the instant case, considering the fact that purchaser of the subject property has expired and the heirs and legal representatives were required to take legal assistance to challenge the order of forfeiture in a forum which is not located in the State but at Delhi, the time consumed in presenting the appeal from 17-1-1996 to 11-6-1996 could not be said to be unreasonable delay.

9. The above stated observation made by the respondent no.3 in the impugned order suggests that the Tribunal has dismissed the application of the petitioner for condonation of delay by applying the rule of limitation prescribed vide Section 12(4) of the Act on the basis of analogy. It would be pertinent to note that time limit to prefer appeal against the order of forfeiture of property prescribed under Sec.12(4) is applicable to class of persons on whom the order passed by the competent authority under Section 7 of the Act is served. That, in the instant case, it is undisputed that no order of competent authority passed under Sec.7 against the respondent no.2 or forfeiture of the subject property was served on the petitioner. Not only that, no notice under Section 6 of the Act before initiation of a proceeding for the forfeiture of the property by the competent authority was served on the petitioner despite the undisputed fact emerging from the revenue record that mutation entry in the name of deceased Nensi Narandas Popat was already mutated. That thereby, order passed by the competent authority under Sec.7 in respect to

forfeiture of property of the subject land qua the petitioner is void ab initio. That the respondent no.3 appears to have overlooked the said fact and erroneously applied the stringent provisions of the rule of limitation contained in Section 12(4) of the Act by analogy which has caused failure of justice, and as such, the impugned order is bad in law. That the said view is fortified by the observation made by the apex Court in the matter of YAKUB ABDUL RAZAK MEMON VS. COMPETENT AUTHORITY, reported vide 1997(2) SCC 421.

10. On the basis of the foregoing discussion, it has to be concluded that in the absence of service of any notice under Sec.6 of the Act on the petitioner, the proceedings initiated by the competent authority under Sec.7 in respect to subject property being void ab initio, there is no question of reckoning any period of limitation for filing the appeal to challenge the said order of competent authority passed under Sec.7 of the Act, and as such, the respondent no.3 should have entertained the appeal of the petitioner and disposed of the same in accordance with law.

11. On the basis of the foregoing discussion, the petition is allowed. The impugned order dated 28th January, 1999 passed by the respondent no.3 in the proceedings of M.P. No.112/AHD/96/(COD) copy of which is produced at Annexure "J" is hereby quashed and set aside. The respondent no.3 is directed to take on file appeal of the petitioners challenging the order of forfeiture of subject property bearing Survey no.33 alongwith Survey nos.34 and 69 of village Nirana Taluka Khambolia, District Jamnagar passed by the respondent no.1 dated 29-6-1981 and to decide the same in accordance with law. Rule to that extent is made absolute.

(A.K.Trivedi, J.)

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